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10/821,334

04/09/2004

Michael M. Bellick

ARP 5588.1

9991

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7590

11/03/2006

SENNIGER POWERS  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS, MO 63102

EXAMINER

SPAHN, GAY

ART UNIT

PAPER NUMBER

3635

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/821,334  
Filing Date: April 09, 2004  
Appellant(s): BELLICK ET AL.

**MAILED**

NOV 03 2006

**GROUP 3600**

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Michael G. Munsell  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the Amended Appeal Brief (hereinafter "brief") filed 15 August 2006 appealing from the Office action mailed 09 February 2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of the claims on appeal:

5,881,405	GARRIGUES	3-1999
6,175,976	CANTWELL	1-2001
4,072,345	MATSUDA	2-1978

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 5, 6, 10-13, 15, 17, and 18 are rejected under 35 U.S.C. 103(a) as unpatentable over GARRIGUES (U.S. Patent No. 5,881,405) in view of CANTWELL (U.S. Patent No. 6,175,976).

As to claim 1, GARRIGUES discloses a vented sleeping bag (10) comprising:

an elongate shell (12, 14) defining an inner volume sized and shaped to receive a user therein, the elongate shell having a head end (18), a foot end (17), left and right sides extending longitudinally of the shell, an overlying portion (14) adapted to overlie said user and an underlying portion (12) adapted to underlie said user;

a fastener (unnumbered stitching connecting the top piece (14) to the bottom piece (12) - see col. 3, lines 37-39) joining the overlying and underlying portions (14, 12); at least one vent (40, 30, 20) in said overlying portion (14) of the shell (12, 14) located adjacent the foot end (17) of the shell (12, 14) between the left and right sides of the shell (12, 14); and

a closure (44) selectively movable between a closed position (not shown, but when hook and loop fastener pair (46, 48) shown in Fig. 4 are attached to each other) for closing said at least one vent (40, 30, 20) and an open position (Fig. 4) for creating a vent opening for ventilating the inner volume of the shell (12, 14).

The examiner notes that since the vent duct portion (30) of the at least one vent (40, 30, 20) is in the overlying portion (14) of the shell (12, 14), the claim limitation is deemed to be met.

GARRIGUES fails to explicitly disclose that his fastener selectively joins the overlying and underlying portions such that the overlying and underlying portions can be partially separated to allow entry into and exit out of the inner volume of the shell by the user.

CANTWELL discloses a sleeping bag (10) having an elongate shell (12) with a fastener (28) selectively joining the overlying and underlying portions (24, 22) such that

the overlying and underlying portions (24, 22) can be partially separated to allow entry into and exit out of the inner volume of the shell (12) by the user.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sleeping bag (10) of GARRIGUES by replacing the fastener (i.e., stitching) of GARRIGUES with the fastener (28) of CANTWELL in order to make it easier for a user to get into and out of the sleeping bag.

**As to claim 2,** GARRIGUES in view of CANTWELL discloses the sleeping bag of claim 1 as discussed above, and GARRIGUES also discloses that the at least one vent (40, 30, 20) extends longitudinally of the shell (12, 14).

The examiner notes that since the vent duct portion (30) of the at least one vent (40, 30, 20) extends longitudinally of the shell (12, 14), the claim limitation is deemed to be met.

**As to claim 5,** GARRIGUES in view of CANTWELL discloses the sleeping bag of claim 1 as discussed above, and GARRIGUES also discloses that the shell (12, 14) further comprises an end panel (16) closing the foot end (17) of the shell (12, 14).

**As to claim 6,** GARRIGUES in view of CANTWELL discloses the sleeping bag of claim 5 as discussed above, and GARRIGUES also discloses that the at least one vent (40, 30, 20) extends into the end panel (16) of the shell (12, 14) toward the underlying portion (12) of the shell (12, 14). The examiner notes that since the foot vent portion (40) of the at least one vent (40, 30, 20) extends into the end panel (16) of the shell (12, 14), the claim limitation is deemed to be met.

**As to claim 10,** GARRIGUES in view of CANTWELL discloses the sleeping bag of claim 1 as discussed above, and GARRIGUES also discloses a mesh cover (40, 24) attached to the shell (12, 14) for covering the vent opening.

The examiner notes that the recitation of "said mesh cover collapsing within the shell when the at least one vent is closed" is a recitation of intended use and that as such, all the examiner need do is show that the reference is capable of performing said intended use. The mesh cover (40, 24) of GARRIGUES is capable of "collapsing within the shell when the at least one vent is closed" due to gravitational forces because there is no rigid frame member connected to the shell (12, 14) of GARRIGUES that would prevent the mesh cover (40) from collapsing within the shell (12, 14), particularly when no user is inside the sleeping bag (10). Also, one could push on the mesh cover (40, 24) of GARRIGUES with their hand or finger and thus collapse the mesh cover (40, 24) within the parameters of the shell (12, 14) of the sleeping bag (10) in order to close the at least one vent (40, 30, 20).

**As to claim 18,** GARRIGUES in view of CANTWELL discloses the sleeping bag of claim 1 as discussed above, and CANTWELL also discloses that said fastener (28) is a slide fastener.

**As to claim 11,** GARRIGUES discloses a vented sleeping bag (10) comprising:  
an elongate shell (12, 14) defining a inner volume sized and shaped to receive a user therein, the elongate shell (12, 14) having a head end (18), a foot end (17), left and right sides extending longitudinally of the shell (12, 14), an overlying portion (14)

adapted to overlie said user, and the underlying portion (12) adapted to underlie said user;

a fastener (unnumbered stitching connecting the top piece (14) to the bottom piece (12) - see col. 3, lines 37-39) joining the overlying and underlying portions (14, 12); at least one longitudinal vent (40, 30, 20) in said overlying portion (14) of the shell (12, 14) located between the left and right sides of the shell (12, 14) and extending longitudinally of the shell (12, 14); and

a closure (44) selectively movable between a closed position (not shown, but when hook and loop fastener pair (46, 48) shown in Fig. 4 are attached to each other) for closing said at least one longitudinal vent (40, 30, 20) and an open position (Fig. 4) for creating a vent opening for ventilating the inner volume of the shell (12, 14).

The examiner notes that the at least one longitudinal vent (40, 30, 20) has a vent duct portion (30) which is longitudinal and which is in the overlying portion (14) of the shell (12, 14) so that the claim limitation is deemed to be met.

GARRIGUES fails to explicitly disclose that his fastener selectively joins the overlying and underlying portions such that the overlying and underlying portions can be partially separated to allow entry into and exit out of the inner volume of the shell by the user.

CANTWELL discloses a sleeping bag (10) having an elongate shell (12) with a fastener (28) selectively joining the overlying and underlying portions (24, 22) such that the overlying and underlying portions (24, 22) can be partially separated to allow entry into and exit out of the inner volume of the shell (12) by the user.



It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ventilated sleeping bag (10) of GARRIGUES by replacing the fastener (i.e., stitching) of GARRIGUES with the fastener (28) of CANTWELL in order to make it easier for a user to get into and out of the sleeping bag.

**As to claim 12,** GARRIGUES in view of CANTWELL discloses the sleeping bag of claim 11 as discussed above, and GARRIGUES also discloses that the shell (12, 14) further comprises an end panel (16) at the foot end (17) of the shell (12, 14) and wherein the at least one longitudinal vent (40, 30, 20) is partially positioned within the overlying portion (14) and the end panel (16).

The examiner notes that the at least one longitudinal vent (40, 30, 20) has a vent duct portion (30) which is positioned within the overlying portion (14) of the shell (12, 14) and a foot vent (40) which is in the end panel (16) of the shell (12, 14) so that the claim limitation is deemed to be met.

**As to claim 13,** GARRIGUES in view of CANTWELL discloses the sleeping bag of claim 11 as discussed above, and GARRIGUES also discloses that the at least one longitudinal vent (40, 30, 20) is located about midway between the left and right sides.

The examiner notes that the vent duct portion (30) of the at least one longitudinal vent (40, 30, 20) is located about midway between the left and right side so that the claim language is deemed to be met.

**As to claim 15,** GARRIGUES in view of CANTWELL discloses the sleeping bag of claim 11 as discussed above, and GARRIGUES also discloses a mesh cover (40, 24) attached to the shell (12, 14) for covering the vent opening.

The examiner notes that the recitation of "said mesh cover collapsing within the shell when the at least one vent is closed" is a recitation of intended use and that as such all the examiner need do is show that the reference is capable of performing said intended use. The mesh cover (40, 24) of GARRIGUES is capable of "collapsing within the shell when the at least one vent is closed" due to gravitational forces because there is no rigid frame member connected to the shell (12, 14) of GARRIGUES that would prevent the mesh cover (40, 24) from collapsing within the shell (12, 14), particularly when no user is inside the sleeping bag (10). Also, one could push on the mesh cover (40, 24) of GARRIGUES with their hand or finger and thus collapse the mesh cover (40, 24) within the parameters of the shell (12, 14) of the sleeping bag (10) in order to close the at least one vent (40, 30, 20).

**As to claim 17,** GARRIGUES in view of CANTWELL discloses the sleeping bag of claim 11 as discussed above, and CANTWELL also discloses that said fastener (28) is a slide fastener.

**Claims 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over GARRIGUES (U.S. Patent No. 5,881,405) in view of CANTWELL (U.S. Patent No. 6,175,976) and MATSUDA (U.S. Patent No. 4,072,345).**

**As to claim 10,** GARRIGUES in view of CANTWELL discloses the sleeping bag of claim 1 as discussed above, and GARRIGUES also discloses a mesh cover attached to the shell for covering the vent opening.

In the alternative, if GARRIGUES is not considered as disclosing that said mesh cover is collapsible within the shell when the at least one vent is closed, then MATSUDA discloses a mesh cover (23) which is collapsible within the shell when the at least one vent is closed (see embodiment of Figs. 3 and 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sleeping bag of GARRIGUES in view of CANTWELL by making the mesh cover be collapsible within the shell when the at least one vent is closed as taught by MATSUDA in order to have a vent structure which can be opened and closed easily for venting a sleeping bag as needed by the occupant of the sleeping bag.

**As to claim 15,** GARRIGUES in view of CANTWELL discloses the sleeping bag of claim 11 as discussed above, and GARRIGUES also discloses a mesh cover (40) attached to the shell (12, 14) for covering the vent opening.

In the alternative, if GARRIGUES is not considered as disclosing that said mesh cover is collapsible within the shell when the at least one vent is closed, then MATSUDA discloses a mesh cover (23) which is collapsible within the shell when the at least one longitudinal vent is closed (see embodiment of Figs. 3 and 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sleeping bag of GARRIGUES in view of CANTWELL by making the mesh cover be collapsible within the shell when the at least one longitudinal vent is closed as taught by MATSUDA in order to have a vent structure

which can be opened and closed easily for venting a sleeping bag as needed by the occupant of the sleeping bag.

**Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over CANTWELL (U.S. Patent No. 6,175,976) in view of GARRIGUES (U.S. Patent No. 5,881,405).**

As to claim 1, CANTWELL discloses a vented sleeping bag (10) comprising:  
an elongate shell (12) defining an inner volume sized and shaped to receive a user therein, the elongate shell (12) having a head end (16), a foot end (18), left and right sides (27, 27) extending longitudinally of the shell (12), an overlying portion (24) adapted to overlie said user and an underlying portion (22) adapted to underlie said user;

a fastener (28) selectively joining the overlying and underlying portions (24, 22) such that the overlying and underlying portions (24, 22) can be partially separated to allow entry into and exit out of the inner volume of the shell (12) by the user;

at least one venting section (32) located adjacent the foot end (18) of the shell (12); and a closure (38) selectively movable between a closed position (Fig. 1) for closing said at least one venting section (32) and an open position (Fig. 2) for creating a vent opening (34) for ventilating the inner volume of the shell (12).

CANTWELL fails to explicitly disclose that the at least one venting section (32) is in said overlying portion (24) of the shell (12) and is located between the left and right

sides (27, 27) of the shell (12) or that the venting sections (32) comprise a mesh covering allowing direct venting to the ambient.

However, GARRIGUES discloses a vented sleeping bag (10) having at least one vent (40, 30, 20) in said overlying portion (14) of the shell (12, 14) and is located between the left and right sides of the shell (12, 14).

The examiner notes that the vent duct portion (30) of the at least one vent (40, 30, 20) is in said overlying portion (14) of said shell (12, 14) and is located between the left and right sides of the shell (12, 14), which are recited in claim 11. Vent (40, 30, 20) includes a mesh covering (40, 24) allowing direct venting to the ambient.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sleeping bag of CANTWELL by putting his at least one venting section (32) on the overlying portion (24) of the shell (12) between the left and right sides (27, 27) as taught by GARRIGUES in order to provide more even cooling between the left and right side and to provide for cooling of the upper portion of the persons body as well as the sides.

Further, with GARRIGUES' teaching of a mesh covering, (40, 24) allowing direct venting to the ambient one of ordinary skill in the art would have found it obvious to have provided the CANTWELL venting sections (32), along the sides as well as along the proposed overlying central portion thereof, with a mesh covering so as to allow for direct venting to the ambient.

**As to claim 2**, CANTWELL in view of GARRIGUES discloses the sleeping bag of claim 1 as discussed above, and both CANTWELL and GARRIGUES also disclose

that the at least one vent (32 in CANTWELL, 40, 30, 20 in GARRIGUES) extends longitudinally of the shell (12 in CANTWELL, 12, 14 in GARRIGUES).

As to claim 3, CANTWELL in view of GARRIGUES discloses the sleeping bag of claim 2 as discussed above, and CANTWELL also discloses that the at least one vent (32) extends longitudinally from generally about the foot end (18) of the shell (12) toward the head end (16) of the shell (12) a distance corresponding to about 10 to 50 percent of the overall length of the shell (12).

The examiner notes that although CANTWELL does not explicitly disclose what distance his at least one vent (32) extends along the length of the shell, it appears from the drawing figures that it is approximately 50%. The vent duct portion (30) of the at least one vent (40, 30, 20) of GARRIGUES appears to extend longitudinally for a distance of about 75% of the overall length of the shell.

It is well settled that changes in size/proportion (i.e., dimensions) do not constitute a patentable difference. See *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), wherein the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Thus, it would have been an obvious expedient to one of ordinary skill in the art at the time the invention was made to modify CANTWELL in view of GARRIGUES by making the at least one vent extend longitudinally along the length of the shell from the

foot end towards the head end for a distance of between about 10 to 50% of the overall length of the shell in order to maximize or minimize the cooling effect depending upon the needs of the user to use the sleeping bag and because changes in size/proportion (i.e., dimensions) do not constitute a patentable difference.

**As to claim 4,** CANTWELL in view of GARRIGUES discloses the sleeping bag of claim 3 as discussed above, and GARRIGUES also discloses that the at least one vent (40, 30, 20) is about midway between the left and right sides of the shell (12, 14).

The examiner notes that the vent duct portion (30) of the at least one vent (40, 30, 20) of GARRIGUES is about midway between the left and right sides of the shell (12, 14) so that the claim language is deemed to be met by CANTWELL in view of GARRIGUES.

**As to claim 5,** CANTWELL in view of GARRIGUES discloses the sleeping bag of claim 1 as discussed above, and both CANTWELL and GARRIGUES also disclose that the shell (12 in CANTWELL, 12, 14 in GARRIGUES) further comprises an end panel (26 in CANTWELL, 16 in GARRIGUES) closing the foot end (18 in CANTWELL, 17 in GARRIGUES) of the shell (12 in CANTWELL, 12, 14 in GARRIGUES).

**As to claim 6,** CANTWELL in view of GARRIGUES discloses the sleeping bag of claim 5 as discussed above, and GARRIGUES also discloses that the at least one vent (40, 30, 20) extends into the end panel (16) of the shell (12, 14) toward the underlying portion (12) of the shell (12, 14).

The examiner notes that the foot vent portion (40) of the at least one vent (40, 30, 20) of GARRIGUES extends into the end panel (16) so that this limitation is deemed

to be met by CANTWELL in view of GARRIGUES. In other words, attaching a mesh cover to CANTWELL so as to extend into the CANTWELL end panel would have constituted an obvious expedient as shown and taught by GARRIGUES.

**As to claim 7,** CANTWELL in view of GARRIGUES discloses the sleeping bag of claim 1 as discussed above, and CANTWELL also discloses that the at least one vent (32) is defined by adjacent edges of the shell (12), said edges being separable when the closure is in an open position (see Fig. 3 to Fig. 4) to create said vent opening (34) for ventilating the inner volume of the shell (12).

**As to claim 8,** CANTWELL in view of GARRIGUES discloses the sleeping bag of claim 7 as discussed above, and CANTWELL also discloses that the shell (12) tapers toward the foot end (18) of the shell (12) when the closure (38) is in its closed position (see Fig. 1), and wherein said edges of the shell (12) defining said vent (32) are separable when the closure (38) is in an open position (see Fig. 4) to expand the said inner volume of the shell (12) adjacent said foot end (18) of the shell (12).

**As to claim 9,** CANTWELL in view of GARRIGUES discloses the sleeping bag of claim 1 as discussed above, and CANTWELL also discloses that the closure (38) comprises a single slide fastener (40) for selectively adjusting the size and position of the vent opening (34).

Neither CANTWELL nor GARRIGUES explicitly disclose that the closure (38) comprises a pair of slide fasteners for selectively adjusting the size and position of the vent opening (34).



However, it is well settled that a duplication of parts does not constitute a patentable difference. See *In re Hacza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) (Claims at issue were directed to a water-tight masonry structure wherein a water seal of flexible material fills the joints which form between adjacent pours of concrete. The claimed water seal has a "web" which lies \*\* in the joint, and a plurality of "ribs" \*\* >projecting outwardly from each side of the web into one of the adjacent concrete slabs. <The prior art disclosed a flexible water stop for preventing passage of water between masses of concrete in the shape of a plus sign (+). Although the reference did not disclose a plurality of ribs, the court held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced.).

Therefore, it would have been an obvious expedient to one of ordinary skill in the art at the time the invention was made to modify the sleeping bag of CANTWELL in view of GARRIGUES with a pair of slide fasteners for selectively adjusting the size and position of the vent opening since CANTWELL discloses a single slide fastener and duplication of parts does not constitute a patentable difference.

**As to claim 10**, CANTWELL in view of GARRIGUES discloses the sleeping bag of claim 1 as discussed above, and GARRIGUES also discloses a mesh cover (40, 24) attached to the shell (12, 14) for covering the vent opening allowing direct venting to the ambient.

Therefore, and as stated with respect to arguments presented against claim 1, with GARRIGUES' teaching of a mesh covering, (40, 24) allowing direct venting to the ambient one of ordinary skill in the art would have found it obvious to have provided the

CANTWELL venting sections (32), (along the sides as well as along the proposed overlying central portion thereof), with a mesh covering so as to allow for direct venting to the ambient. As such, the mesh extending across the portions (32) of CANTWELL would collapse within the shell when the vent is closed, (see Figs. 3 and 4 of CANTWELL, for example).

**As to claim 18,** CANTWELL in view of GARRIGUES discloses the sleeping bag of claim 1 as discussed above, and CANTWELL also discloses that said fastener (28) is a slide fastener.

**As to claim 11,** CANTWELL discloses a vented sleeping bag (10) comprising:  
an elongate shell (12) defining an inner volume sized and shaped to receive a user therein, the elongate shell (12) having a head end (16), a foot end (18), left and right sides (27, 27) extending longitudinally of the shell (12), an overlying portion (24) adapted to overlie said user and an underlying portion (22) adapted to underlie said user;

a fastener (28) selectively joining the overlying and underlying portions (24, 22) such that the overlying and underlying portions (24, 22) can be partially separated to allow entry into and exit out of the inner volume of the shell (12) by the user; at least one longitudinal venting section (32) extending longitudinally of the shell (12); and

a closure (38) selectively movable between a closed position (Fig. 1) for closing said at least one longitudinal venting sections (32) and an open position (Fig. 2) for creating a vent opening (34) for ventilating the inner volume of the shell (12).

CANTWELL fails to explicitly disclose that the at least one longitudinal venting section (32) is in said overlying portion (24) of the shell (12) and is located between the left and right sides (27, 27) of the shell (12) or that the venting sections (32) comprise a mesh covering allowing direct venting to the ambient.

However, GARRIGUES discloses a vented sleeping bag (10) having at least one longitudinal vent (40, 30, 20) in said overlying portion (14) of the shell (12, 14) and is located between the left and right sides of the shell (12, 14).

The examiner notes that the vent duct portion (30) of the at least one vent (40, 30, 20) is longitudinal, is in said overlying portion (14) of said shell (12, 14), and is located between the left and right sides of the shell (12, 14) all of which are recited in claim 11.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sleeping bag of CANTWELL by putting his at least one longitudinal venting section (32) on the overlying portion (24) of the shell (12) between the left and right sides (27, 27) as taught by GARRIGUES in order to provide more even cooling between the left and right side and to provide for cooling of the upper portion of the persons body as well as the sides.

Further, with GARRIGUES' teaching of a mesh covering, (40, 24) allowing direct venting to the ambient one of ordinary skill in the art would have found it obvious to have provided the CANTWELL venting sections (32), along the sides as well as along the proposed overlying central portion thereof, with a mesh covering so as to allow for direct venting to the ambient.

**As to claim 12,** CANTWELL in view of GARRIGUES discloses the sleeping bag of claim 11 as discussed above, and GARRIGUES also discloses that the shell (12, 14) further comprises an end panel (16) at the foot end (17) of the shell (12, 14) and wherein the at least one longitudinal vent (40, 30, 20) is partially positioned within the overlying portion (14) and the end panel (16).

The examiner notes that the foot vent portion (40) of the at least one longitudinal vent (40, 30, 20) of GARRIGUES is in the end panel (16) and the vent duct portion (30) of the at least one longitudinal vent (40, 30, 20) of Garri.ques is in the overlying portion (14) so that the claim language is met.

**As to claim 13,** CANTWELL in view of GARRIGUES discloses the sleeping bag of claim 11 as discussed above, and GARRIGUES also discloses that the at least one longitudinal vent (40, 30, 20) is located about midway between the left and right sides.

The examiner notes that the vent duct portion (30) of the at least one longitudinal vent (40, 30, 20) is located about midway between the left and right sides of the shell (12, 14) so that the claim language is deemed to be met by CANTWELL in view of GARRIGUES.

**As to claim 14,** CANTWELL in view of GARRIGUES discloses the sleeping bag of claim 11 as discussed above, and CANTWELL also discloses that the closure (38) comprises a single slide fastener (40) for selectively adjusting the size and position of the vent opening (34).

Neither CANTWELL nor GARRIGUES explicitly disclose that the closure (38) comprises a pair of slide fasteners for selectively adjusting the size and position of the vent opening (34).

However, it is well settled that a duplication of parts does not constitute a patentable difference. See *In re Hacza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) (Claims at issue were directed to a water-tight masonry structure wherein a water seal of flexible material fills the joints which form between adjacent pours of concrete. The claimed water seal has a "web" which lies \*\* in the joint, and a plurality of "ribs" \*\* >projecting outwardly from each side of the web into one of the adjacent concrete slabs. <The prior art disclosed a flexible water stop for preventing passage of water between masses of concrete in the shape of a plus sign (+). Although the reference did not disclose a plurality of ribs, the court held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced.).

Therefore, it would have been an obvious expedient to one of ordinary skill in the art at the time the invention was made to modify the sleeping bag of CANTWELL in view of GARRIGUES with a pair of slide fasteners for selectively adjusting the size and position of the vent opening since CANTWELL discloses a single slide fastener and duplication of parts does not constitute a patentable difference.

**As to claim 15,** CANTWELL in view of GARRIGUES discloses the sleeping bag of claim 11 as discussed above, and GARRIGUES also discloses a mesh cover (40, 24) attached to the shell (12, 14) for covering the vent opening allowing direct venting to the ambient.

Therefore, and as stated with respect to arguments presented against claim 1, with GARRIGUES' teaching of a mesh covering, (40, 24) allowing direct venting to the ambient one of ordinary skill in the art would have found it obvious to have provided the CANTWELL venting sections (32), (along the sides as well as along the proposed overlying central portion thereof), with a mesh covering so as to allow for direct venting to the ambient. As such, the mesh extending across the portions (32) of CANTWELL would collapse within the shell when the vent is closed, (see Figs. 3 and 4 of CANTWELL, for example).

**As to claim 16,** CANTWELL in view of GARRIGUES discloses the sleeping bag of claim 11 as discussed above, and CANTWELL also discloses that the at least one longitudinal vent (32) is defined by adjacent edges of the shell (12), said edges being separable when the closure is in an open position (see Fig. 3 to Fig. 4) to create said vent opening (34) for ventilating the inner volume of the shell (12).

**As to claim 17,** CANTWELL in view of GARRIGUES discloses the sleeping bag of claim 11 as discussed above, and CANTWELL also discloses that said fastener (28) is a slide fastener.

**Claims 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over CANTWELL (U.S. Patent No. 6,175,976) in view of GARRIGUES (U.S. Patent No. 5,881,405) and MATSUDA (U.S. Patent No. 4,072,345).**

**As to claim 10,** CANTWELL in view of GARRIGUES discloses the sleeping bag of claim 11 as discussed above, and GARRIGUES also teaches a mesh cover (40, 24)

attached to the shell (12, 14) for covering the vent opening to allow direct venting to the ambient.

In the alternative, if CANTWELL in view of GARRIGUES is not considered as disclosing that said mesh cover is collapsible within the shell when the at least one vent is closed, then MATSUDA discloses a mesh cover (23) which is collapsible within the shell when the at least one vent is closed (see embodiment of Figs. 3 and 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sleeping bag of CANTWELL in view of GARRIGUES by making the mesh cover be collapsible within the shell when the at least one vent is closed as taught by MATSUDA in order to have a vent structure which can be opened and closed easily for venting a sleeping bag as needed by the occupant of the sleeping bag. As such, the mesh extending across the portions (32) of CANTWELL would collapse within the shell when the vent is closed, (see Figs. 3 and 4 of CANTWELL, for example).

**As to claim 15,** CANTWELL in view of GARRIGUES discloses the sleeping bag of claim 11 as discussed above, and GARRIGUES also discloses a mesh cover (40, 24) attached to the shell (12, 14) for covering the vent opening to allow direct venting to the ambient.

In the alternative, if CANTWELL in view of GARRIGUES is not considered as disclosing that said mesh cover is collapsible within the shell when the at least one vent is closed, then MATSUDA discloses a mesh cover (23) which is collapsible within the

shell when the at least one longitudinal vent is closed (see embodiment of Figs. 3 and 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sleeping bag of CANTWELL in view of GARRIGUES by making the mesh cover be collapsible within the shell when the at least one longitudinal vent is closed as taught by MATSUDA in order to have a vent structure which can be opened and closed easily for venting a sleeping bag as needed by the occupant of the sleeping bag. As such, the mesh extending across the portions (32) of CANTWELL would collapse within the shell when the vent is closed, (see Figs. 3 and 4 of CANTWELL, for example).

#### **(10) Response to Argument**

##### 103 rejection of claims 1 and 11 over GARRIGUES in view of CANTWELL

The examiner notes that on page 5 of the brief Appellant has a heading for the rejection of claims 1, 2, 5, 6, 10-13, 15, 17, and 18 as being unpatentable over GARRIGUES in view of CANTWELL, but then on pages 5 and 9 Appellants have separate sub-headings with respect to claims 1, 2, 5, 6, 10, and 18 and claims 11, 12, 13, 15, and 17. Since the arguments for independent claim 11 are the same as the arguments for independent claim 1, the sub-headings are improper and the examiner will respond to the 35 U.S.C. §103(a) rejections of independent claims 1 and 11 as being unpatentable over GARRIGUES in view of CANTWELL at the same time.



On page 6, lines 12-16, of the brief and with respect to the rejection of independent claims 1 and 11 under 35 U.S.C. § 103(a) a being unpatentable over GARRIGUES in view of CANTWELL, Appellants argue that neither CANTWELL nor GARRIGUES discloses or suggests “a vented sleeping bag having **at least one vent in the overlying portion of the shell located adjacent the foot end of the shell** between the left and right sides of the shell.” (Emphasis in original).

More particularly, on page 6, lines 17-23, of the brief, Appellants argue that CANTWELL “discloses a sleeping bag (10) having a slide fastener (30) for providing partial separation of the top section (24) from the bottom section (22) to allow easy entry and egress by the person using the sleeping bag,” but that CANTWELL “fails to disclose or suggest a vent.” (Emphasis in original).

The examiner notes that Appellants’ argument that CANTWELL fails to disclose or suggest a vent is misplaced because for the purposes of the rejection of claims 1 and 11 under 35 U.S.C. 103(a) as being unpatentable over GARRIGUES in view of CANTWELL, CANTWELL was not relied upon to show a vent. Rather, GARRIGUES was relied upon to show all the limitation of the claim including the shell, the fastener, the vent, and the closure, but failed to show that its fastener (i.e., stitching) could be partially separated to allow entry and exit out of the inner volume of the shell by the user. CANTWELL was only relied upon to show that which was missing from GARRIGUES (i.e., an elongate shell having an overlying portion and an underlying portion, wherein the overlying and underlying portions are connected to each other by a particularly type of fastener which allows for the overlying and underlying portions to be

partially separated from each other for entry into and exit out of the inner volume of the shell by the user).

In response to Appellants' arguments against CANTWELL individually (i.e., that CANTWELL fails to show a vent), the examiner notes that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references (i.e., GARRIGUES shows all limitations of claims 1 and 11 except for particular type of fasteners which allows for separation of overlying and underlying portions and CANTWELL discloses this missing feature of GARRIGUES). See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

On page 6, line 24 through page 7, line 6 of the brief, Appellants also argue that GARRIGUES does not show or suggest "a vent on the overlying portion of the shell" (i.e., the portion of the shell adapted to overlie the user) because they allege that GARRIGUES discloses a bivouac sack (10) having an end piece (16) with a foot vent (40) therein, the foot vent (40) cooperating with a vent duct (30) and a latitudinal opening (20) in the head end (18) to circulate air throughout the sack for venting and extracting internal moisture from the sack (10). In other words, it is Appellants' position that, the entire foot vent (40), as shown in Figs. 3, 4, and 7B, is disposed in the end piece (16) and that no portion of the foot vent (40) is positioned in the top (14) or overlying portion of the sack (10).

Further, at page 7, lines 12-25 of the brief, it appears to be Appellants' contention that GARRIGUES' vent duct (30) is not a vent in the same sense as the vent claimed in

independent claims 1 and 11, but rather is only "a duct or tube that is in fluid communication with the foot vent" and that only the foot vent (40) of GARRIGUES by itself may be considered to be analogous to the vent as claimed in independent claims 1 and 11. More particularly, while Appellants concede that the vent duct (30) and latitudinal opening (20) of GARRIGUES do cooperate with the foot vent (40) to form a "vent system", it is Appellants' position that "characterizing the vent duct (30) of GARRIGUES as forming part of the vent as recited in claim 1 is improper" because "the vent as recited in claim 1 is not a duct or tube in fluid communication with an opening as is the vent duct (30) of GARRIGUES." (Emphasis added).

The examiner disagrees that GARRIGUES' vent duct (30) is not a part of the "vent" means or structure of the GARRIGUES' sleeping bag invention. Indeed, GARRIGUES clearly meant all three of the foot vent (40), central vent duct (30), and head opening (20) structures to cooperate with one another in order to be able to vent the sleeping bag (10).

See the last two sentences of GARRIGUES' Abstract, wherein it states that:

The personal shelter also includes a first opening (40) at the foot end, a second opening (20) near the head end, and a semi-rigid duct (30) with an inlet end that is approximately colocated with the first opening and an outlet end that is approximately colocated with the second opening. The semi-rigid duct receives outside air through the first end, mixes the received outside air with moist air within the personal shelter, and exhausts the mixed air through the second end. (Emphasis added).

See also GARRIGUES' Summary of the Invention section, col. 1, lines 46-47 and 50- 62, wherein it states that:

In accordance with this invention, a personal shelter for evacuating internal moisture and venting is provided .... The personal shelter also

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includes a first opening at the first end, a second opening at the second end and a semi-rigid duct with a first end that is approximately collocated with the first opening and a second end that is approximately collocated with the second opening. The semi-rigid duct receives outside air through the first end, mixes the received outside air with moist air within the personal shelter, and exhausts the mixed air through the second end.

In accordance with still other aspects of this invention, the duct is tapered from a smaller cross-section at the first end to a larger cross-section at the second end for promoting air flow from the first end to the second end. (Emphasis added).

See also GARRIGUES' Detailed Description of the Preferred Embodiment section, col. 4, lines 21-26 and col. 5, lines 7-22, wherein it states that:

Located just inside the foot vent 40 at the top of the top piece 14 is the intake end of the vent duct 30. The vent duct 30 extends longitudinally along the centerline crest of the top piece 14, to the head opening 20. The vent duct 30 is a semi-rigid construction for receiving air through the foot vent 40 when the foot vent cover 44 is fully or partially open ....

As shown in FIGS. 1, 7A and 7B, the width or diameter of the vent duct 30 increases as it extends from the foot vent 40 to the head opening 20. This tapering of the vent duct 30 promotes the movement of air from outside the bivy sack 10 through foot vent 40, into and through vent duct 30, and out the head opening 20. Selective opening and closing of the foot vent 40 and head opening 20 allows control of the rate of air flow through vent duct 30. Because outside air is drier and colder than air trapped inside the bivy sack 10, the drier outside air draws the moister air from within the interior of the bivy sack 10 through the support material 62. As the mixed air flows forwardly and slightly upwardly through the vent duct 30, it warms, expands, and evaporates any moisture clinging to the support material 60 or the inner wall 62 of the vent duct 30. The expansion of air as it warms creates and maintains an airflow through the vent duct 30.

Clearly, GARRIGUES' intended his vent duct (30) to be part of his venting system/process and the venting system/process of GARRIGUES would not work as intended were not the vent duct an integral part of the venting system/process. Appellants' attempt to characterize GARRIGUES' foot vent (40) as the only part of GARRIGUES' venting system/process which is equivalent to Appellants' vent (3) is

misplaced because without the vent duct (30), GARRIGUES' venting system/process would not work for its intended purpose of venting.

On page 7, line 26 through page 8, line 6 of the brief, Appellants state that GARRIGUES' foot vent (40) meets Webster's Third New International Dictionary Unabridged (copyright 2002, page 2541) definition of a "vent" (i.e., an opening or hole for the escape or passage of something (as a gas or liquid) or for the relief of pressure within something (as a boiler)) and point to col. 3, lines 43-44 of GARRIGUES' specification, wherein it states that "[t]he foot vent 40 allows stagnant air within the foot end 17 of the bivy sack 10 to escape and fresher outside air to enter" for support of this. However, then Appellants argue that neither the dictionary definition of the word "vent" nor GARRIGUES' description of his foot vent at col. 3, lines 43-44 support the examiner's proposition that the vent duct (30) of GARRIGUES' is a vent.

The examiner disagrees. It is the examiner's position that GARRIGUES' vent duct (30) reads right on the above-quoted dictionary definition. Further, GARRIGUES' description of this foot vent (30) at col. 3, lines 43-44 does nothing to weaken the examiner's position that the vent duct (30) is a vent because it is part of a venting system/process. Indeed, at col. 4, lines 21-27, GARRIGUES' discusses the "intake end" of the vent duct (30) and how the vent duct (30)' is "for receiving air through the foot vent 40." Thus, the intake end of the vent duct (30) is an opening or hole for the escape or passage of air from the foot vent (40) to the head opening (20).

At page 8, lines 7-18 of the brief, Appellants also argue that GARRIGUES' foot vent (40) as defined at col. 3, lines 41-42, wherein it is stated that "[t]he foot end 17

includes a foot vent 40 that is defined by edges of the top piece 14 and end piece 16” and this is substantially the same as the definition of a vent as set forth in Appellants’ specification at page 5, paragraph no. [0021], wherein it states that “[t]he vent is defined by adjacent edges 35 of the shell which are joined together when the closure is in its closed position (Fig. 1).” In other words, Appellants apparently are contending that since both GARRIGUES’ foot vent (40) and the present application’s vent (3) are “defined by edges, which define an opening or vent”, then the foot vent (40) of GARRIGUES must be analogous to Appellants’ vent (3) so that the vent duct (30) of GARRIGUES is not a vent.

The examiner finds Appellants’ reasoning to be flawed. Just because Appellants want to characterize GARRIGUES’ foot vent (40) as being more analogous to the vent (3) of their present application does not mean that the vent duct (30) is not part of the venting system and process of the GARRIGUES’ invention and also does not mean that it is not all of the foot vent (40), the vent duct (30), and the head opening (20) that form the vent of GARRIGUES so that GARRIGUES reads on the limitation of “at least one vent in said overlying portion of the shell” because the vent duct (30) is part of a venting system and is located on the overlying portion.

Further, while Appellants are allowed to be their own lexicographer, they are not allowed to define a term in such a way as to go against the common everyday meaning of a term. GARRIGUES clearly intended the vent duct (30) to be a part of his venting system since he didn't simply call it a duct, but a “vent” duct and because he intended all three structural parts (i.e., the foot vent (40), the vent duct (30), and the head

opening (20) to cooperate with each other to perform the venting function. Thus, it is all three portions (i.e., foot vent 40, vent duct 30, heading opening 20) of GARRIGUES that work together to constitute a vent and since a portion of the vent (i.e., the vent duct 30) is on the overlying portion of the shell, the claim language of independent claims 1 and 11 are met by GARRIGUES.

103 rejection of claims 1 and 11 over CANTWELL in view of GARRIGUES

The examiner notes that on page 9 of the brief Appellant has a heading for the rejection of claims 1-18 as being unpatentable over CANTWELL in view of GARRIGUES, but then on pages 9 and 11 Appellants have separate sub-headings with respect to claims 1-10 and 18 and claims 11-17. Since the arguments for independent claim 11 are the same as the arguments for independent claim 1, the sub-headings are improper and the examiner will respond to the 35 U.S.C. §103(a) rejections of independent claims 1 and 11 as being unpatentable over CANTWELL in view of GARRIGUES at the same time.

On page 10, lines 2-5, of the brief and with respect to the rejection of independent claims 1 and 11 under 35 U.S.C. § 103(a) a being unpatentable over CANTWELL in view of GARRIGUES, Appellants argue that “neither CANTWELL nor GARRIGUES whether considered alone or in combination teach or suggest at least one vent in the overlying portion of the shell located adjacent the foot end of the shell.” (Emphasis added).

More particularly, Appellants argue that the “pockets of CANTWELL are not a venting section or a vent as recited in claim 1,” that “[s]uch a characterization of the pockets (32) is arbitrary and is unsupported by the teachings of CANTWELL,” and that “[t]he pockets of CANTWELL do not provide any openings for allowing air to enter or exit the interior of the sleeping bag,” but rather only allow the sleeping bag to be converted from a mummy-style sleeping bag to a rectangular-type sleeping bag. (Emphasis added).

The examiner disagrees that CANTWELL fails to disclose or suggest a vent. As is clearly shown in Figs. 1 and 2 of CANTWELL, the sleeping bag (10) not only has zipper tracks (28) and slide fastener (30) for easy entrance and exit into and out of the sleeping bag, but the sleeping bag (10) also has zipper tracks (38) and slide fasteners (40) on both the right and left side of the sleeping bag (10) such that when the slide fasteners (40) connect the zipper tracks (38), pockets (32) are collapsed within the sleeping bag (10) as shown in Fig. 1 and when the slide fasteners (40) separate the zipper tracks (38), pockets (32) may be pulled outside of the sleeping bag (10) as shown in Fig. 2. Thus, when the pockets (32) are pulled outside of the sleeping bag (10) as shown in Fig. 2, the inner volume of the sleeping bag (10) is enlarged thus allowing for more venting of the sleeping bag (10).

Indeed, see col. 2, line 66 through col. 3, line 12 of CANTWELL, it states that:

In accordance with the present invention, the sleeping bag 10 is convertible from the compact foot space configuration shown in FIG. 1 to an expanded foot space configuration, illustrated in FIG. 2, in which a lateral width W of the bag generally near the foot end portion 18 is extended to increase the available foot space volume inside the bag. In the compact configuration of FIG. 1, the sleeping bag 10 has the shape of



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a tapered, mummy-type bag. It provides relatively better warmth and is well suited for use in cold ambient temperatures. In the expanded configuration of FIG. 2, the sleeping bag 10 has the shape of a constant lateral dimension, rectangular-type bag. It provides more spacious volume for user comfort and is well suited for use in mild to warm ambient temperatures.

The examiner notes that Appellants describe their sleeping bag at page 5, line 23 through page 6, line 11 of the brief, as follows:

The sleeping bag of claim 1 is adapted for use in a wide range of temperatures, from cold to warm. When the vent is closed, the bag conforms to the contours of a user so that air movement within the sleeping bag is minimized making the bag thermally efficient (Fig. i). Thus, the sleeping bag is well suited for use in colder ambient temperatures. When the vent is open, the internal volume of the shell is increased and a vent opening is created which allows communication with outside air and circulation within the bag (Fig. 4). Thus, the sleeping bag of the present invention is also well suited for use in mild to warm ambient temperatures.

In addition, the internal volume of the shell can be adjusted by opening and closing the vent, which allows the user to adjust the sleeping bag to conform to their fit preference. For example, if the user prefers a sleeping bag with less foot room (i.e., a mummy-type bag) the user can close the vent. However, if the user prefers more foot room (i.e., a rectangular bag) the user can open the vent.

This definition of the changing the sleeping bag from the mummy-style for more warmth (i.e., use in colder temperatures) to the rectangular-style for less warmth (i.e., use in milder temperatures) by adjusting the internal volume of the sleeping bag so as to vent the sleeping bag sounds extremely similar to the description of the use of the pockets (32) of CANTWELL repeated above. Thus, it is the examiner's position that the pockets (32) of CANTWELL are equivalent to the vent (3) of Appellents' present application in that both structures provide for venting of the sleeping bag when pulled out from the main portion of the sleeping bag.

Further, since Merriam-Webster's Collegiate® Dictionary (Tenth Edition, Copyright 1997, published by Merriam-Webster, Incorporated, Springfield, Massachusetts) defines "vent" as "1 : an opportunity or means of escape, passage, or release : OUTLET <finally gave ~ to his pent-up hostility> 2 : an opening for the escape of a gas or liquid or for the relief of pressure", CANTWELL clearly discloses a venting situation with the pockets (32) acting as the vents when pulled out from the main portion of the sleeping bag.

On page 10, line 23 through page 11, line 2, Appellants argues, as follows:

In the context of responding to appellant's arguments, the Examiner expressly states that Cantwell "has not been relied upon to show a vent." See page 24, first sentence of the final Office action. This statement appears to be directly contrary to the Examiner's rejection based on Cantwell in view of Garrigues. No explanation is given for why Cantwell is asserted to have a vent for purposes of one rejection, but is not in another rejection.

The examiner notes that Appellants have mischaracterized the examiner's arguments. With respect to the rejections of claims 1 and 11 under 35 U.S.C. § 103(a) as being unpatentable over GARRIGUES in view of CANTWELL, the examiner has not relied upon CANTWELL for its teaching of a vent. The examiner did not say that CANTWELL does not disclose a vent, but just that in her rejections based on GARRIGUES in view of CANTWELL, she is relying on GARRIGUES for its teaching of all the structure of independent claims 1 and 11, including a vent. However, GARRIGUES fails to explicitly disclose the type of fastener which allows for separation of the overlying portion from the underlying portion and therefore, the examiner brings in CANTWELL to disclose the particular type of fastener that Appellant is claiming.

However, the examiner has also rejected independent claims 1 and 11 under 35 U.S.C. § 103(a) as being unpatentable over CANTWELL in view of GARRIGUES. In her rejections of independent claims 1 and 11 under 35 U.S.C. § 103(a) as being unpatentable over CANTWELL in view of GARRIGUES, she is relying on CANTWELL for its teaching of a vent (i.e., pockets 32) as well as all the other structure of independent claims 1 and 11, except for the fact that the vent is located on the overlying portion between the left and right sides of the shell. The examiner then brings in GARRIGUES to show a sleeping bag with a vent on the overlying portion to show that if would have been obvious to one of ordinary skill in the art at the time the invention was made to put the vent of CANTWELL on the overlying portion of the shell as taught by GARRIGUES. It is not contradictory to rely on CANTWELL for its teaching of one thing in one rejection and for its teaching of another thing in another rejection. Indeed, it just goes to prove that Appellants' invention is not new or non-obvious, but is disclosed by numerous references in varying combinations.

Based on the foregoing, it is the examiner's position that Appellants' arguments do not establish that independent claims 1 and 11 are non-obvious over GARRIGUES in view of CANTWELL nor that independent claims 1 and 11 are non-obvious over CANTWELL in view of GARRIGUES.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

<sup>GAS</sup>  
Gay Ann Spahn, Patent Examiner  
October 23, 2006

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